Jus. Davis

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 182.

THE UNITED STATES, APPELLANTS,

vs.

MARGARET ROACH, EXECUTRIX OF BENJAMIN ROACH.

APPEAL FROM THE COURT OF CLAIMS.

FILED MAY 26, 1874.

S. Wayne

SUPREME COURT OF THE UNITED STATES.

No. 182.

THE UNITED STATES, APPELLANTS,

vs.

MARGARET ROACH, EXECUTRIX OF BENJAMIN ROACH.

APPEAL FROM THE COURT OF CLAIMS.

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1 *Petition.*

U. S. Court of Claims.

BENJAMIN ROACH
vs.
THE UNITED STATES. } 3541. Filed Aug. 19, 1868.

To the honorable the judges of the United States Court of Claims:

Your petitioner, Benjamin Roach, respectfully showeth:

That he is a citizen of the United States, and resides in the city of New Orleans, in the parish of Orleans, and in the State of Louisiana; and that he has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said Government.

Your petitioner states that, in the month of April, A. D. 1863, he was the owner and in possession of seventy-four bales of cotton, weighing in all thirty-seven thousand pounds, and which was then and there worth twenty-nine thousand six hundred dollars, on his plantation near Greenville, in Washington County, in the State of Mississippi; that, on the 17th day of April, 1863, after the occupation of that portion of the State by the United States forces, all of said cotton was without the consent of your petitioner, and against his will, seized and taken possession of by Wm. H. Barlow, lieutenant and quartermaster of the 31st Regiment of Missouri Infantry, acting under orders of Major-General Steele, commanding the United States forces at that point, that the said cotton was placed on board the steamer Metropolitan, and shipped to Major-General Grant, at Young's Point, in the State of Louisiana, and there placed on board of gunboats; and your petitioner is informed and be-

2 lieves that the said cotton was turned over to the agents of the Treasury Department, by whom it was sold, and the net proceeds thereof have been paid into the Treasury of the United States.

Your petitioner avers that he is unable to state the precise sum for which said cotton was sold or the expenses attending its seizure, shipment, transportation, and sale, but he states that the said cotton, at the time and place the same was seized, was worth the sum of twenty-nine thousand six hundred dollars.

Your petitioner further shows that his said cotton has never been abandoned or forfeited, or become liable to confiscation under any of the acts of Congress in that behalf made and provided; and that it was not liable to seizure or capture under the laws of nations or the rules and usages of war; that he has applied to Congress for a restoration of the seventy-four bales of cotton, or the proceeds thereof, as aforesaid, which application was reported upon favorably by the Committee of Claims, but that the resolution so reported failed to be acted upon by Congress; that application has also been made to the Secretaries of the Treasury and War for a restoration of said cotton or the proceeds thereof as aforesaid, but without success.

Your petitioner further states that he is entitled to the said proceeds of said cotton under the provisions of the third section of the act of Congress approved March 12, 1863, and that he is the sole owner thereof.

And your petitioner further prays for such other and further relief in

the premises as may be equitable and just, and as in duty bound he will ever pray.

THEO. H. N. McPHERSON,
Attorney for Petitioner.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Theodore H. N. McPherson, being first duly sworn, says that he is attorney of the petitioner, who is absent from the city; that no assignment of the claim set forth in the above petition, or any part thereof, or any interest therein has been made, except as in said petition stated; that the said petitioner is justly entitled to the amount therein claimed from the United States after deducting all just credits and offsets; and that the facts stated in said petition he believes are true.

THEO. H. N. McPHERSON.

3 Subscribed and sworn before me this 14th day of August, A. D. 1868.

[SEAL.] EDM. F. BROWN,
Commissioner of the Court of Claims.

Claimant's address is—
New Orleans, Louisiana.

Claimant's solicitor—
THEO. H. N. McPHERSON,
Washington, D. C.

4 In the United States Court of Claims.

WARREN HALL
vs.
THE UNITED STATES. } 3232.

SAME
vs.
SAME. } 3279.

BENJAMIN ROACH
vs.
SAME. } 3541

The motion filed by Mr. Hale in these cases, on the 25th of January, 1869, for an order requiring the parties to interplead was allowed.
By the court.
FEBRUARY 8, 1869.
A true copy of record.

5 *Petition.*

In U. S. Court of Claims. December term, 1867.

WARREN HALL
vs.
THE UNITED STATES.

To the honorable Court of Claims:

The petition of Warren Hall, a colored citizen of the United States,

resident of Louisiana, Pike County, Missouri, formerly a resident of near Greenville, of Washington County, in the State of Mississippi, showeth:

That, in the month of April, the 14th, A. D. 1863, your petitioner was the owner of, and in possession of, seventy-three bales of cotton, of the aggregate weight of thirty-five thousand three hundred and twenty (35,320 lbs.) pounds, then in the said county of Washington and State of Mississippi; that, soon after the occupation of said county by the United States forces, all of said cotton was seized and taken possession of by General Frederick Steele, then in command of the United States military forces at that point; that the said cotton was turned over by the officer seizing it to an agent of the Treasury Department, by whom it was sold, and the net proceeds thereof have been paid into the Treasury of the United States.

Your petitioner avers that he is unable to state the precise sum for which said cotton was sold, or the expenses attending its seizure, shipment, or transportation and sale; but he states on information and belief that the net proceeds thereof which have been paid into the Treasury amount to one dollar per pound, or the aggregate sum of thirty-five thousand three hundred and twenty ($35,320) dollars, which
6 sum he is entitled to receive under the provisions of the third section of the act of Congress, approved March 12, 1863, entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States."

Your petitioner further shows that he has at all times borne true allegiance to the Government of the United States, and that he has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and he prays the judgment of this honorable court for the said sum of thirty-five thousand three hundred and twenty ($35,320) dollars.

WARREN HALL.

Warren Hall, being duly sworn, deposeth and saith that he is the claimant named in the foregoing petition; that no assignment or transfer of said claim or any part thereof, or any interest therein, has been made, except as in said petition stated; that he is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets, and that he believes the facts as stated in said petition are true.

WARREN HALL.

Subscribed and sworn to before me, at Louisiana, Pike County, Mo., this 18th day of February, 1868.

[SEAL.]

B. F. HESSER,
Notary Public, Pike County, Mo.

Claimant's address is—
WARREN HALL,
Louisiana, Pike County, Mo.

Claimant's solicitors—
HUGHES, DENVER & PECK,
258 *G Street, Washington, D. C.*

7 *Petition of interpleader.*

U. S. Court of Claims.

BENJAMIN ROACH
vs.
THE UNITED STATES. } 3541. Filed Feb'y 22, 1869.

To the honorable the judges of the United States Court of Claims:

Your petitioner, Benjamin Roach, by way of interpleader, respectfully showeth:

That he is a citizen of the United States, and resides in the city of New Orleans, in the parish of Orleans, and in the State of Louisiana*a*; and that he has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said Government.

Your petitioner states that, in the month of April, A. D. 1863, he was the owner and in possession of seventy-four bales of cotton, weighing in all thirty-seven thousand pounds, and which was then and there worth twenty-nine thousand six hundred dollars, on his plantation near Greenville, in Washington County, in the State of Mississippi; that, on the 17th day of April, 1863, after the occupation of that portion of the State by the United States forces, all of said cotton was without the consent of your petitioner, and against his will, seized and taken possession of by Wm. H. Barlow, lieutenant and quartermaster of the 31st Regiment of Missouri Infantry, acting under orders of Major-General Steele, commanding the United States forces at that point; that the said cotton was placed on board the steamer Metropolitan, and shipped to Major-General Grant, at Young's Point, in the State of Louisiana, and there placed on board of gunboats; and your petitioner is informed and believes that the said cotton was turned over to the agents of the
8 Treasury Department, by whom it was sold, and the net proceeds thereof have been paid into the Treasury of the United States.

Your petitioner avers that he is unable to state the precise sum for which said cotton was sold or the expenses attending its seizure, shipment, transportation, and sale, but he states that the said cotton, at the time and place the same was seized, was worth the sum of twenty-nine thousand six hundred dollars.

Your petitioner further shows that his said cotton has never been abandoned or forfeited, or become liable to confiscation under any of the acts of Congress in that behalf made and provided; and that it was not liable to seizure or capture under the laws of nations or the rules and usages of war; that he has applied to Congress for a restoration of the seventy-four bales of cotton, or the proceeds thereof, as aforesaid, which application was reported upon favorably by the Committee of Claims, but that the resolution so reported failed to be acted upon by Congress; that application has also been made to the Secretaries of the Treasury and War for a restoratio*u* of said cotton or the proceeds thereof as aforesaid, but without success.

Your petitioner further states that he is entitled to the said proceeds of said cotton under the provisions of the third section of the act of Congress approved March 12, 1863, and that he is the sole owner thereof.

And your petitioner further prays for such other and further relief in the premises as may be equitable and just, and as in duty bound he will ever pray.

And your petitioner further says that the said cotton was and is his

property, and that he is entitled to the proceeds, and said Warren Hall did not at any time own the same and is not entitled to the proceeds, never having had any interest in the said cotton or the proceeds thereof.

THEO. H. N. McPHERSON,
Attorney for Petitioner.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Theodore H. N. McPherson, being first duly sworn, says that he is attorney of the petitioner, who is absent from the city; that no assignment of the claim set forth in the above petition, or any part thereof, or any interest therein has been made, except as in said petition stated; that the said petitioner is justly entitled to the amount therein claimed from the United States after deducting all just credits and offsets; and that the facts stated in said petition he believes are true.

THEO. H. N. McPHERSON.

9 Subscribed and sworn before me this 16th day of February, A. D. 1869.

[SEAL.]

EDM. F. BROWN,
Commissioner of the Court of Claims.

10 In the United States Court of Claims. December term, A. D. 1868.

BENJAMIN ROACH
vs.
THE UNITED STATES. } No. 3541.

And the said defendants, by their Attorney-General, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of $ the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

T. LYLE DICKEY,
Assistant Attorney-General.

And for a further plea to the said petition the said defendants say that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant did not, "within two years after the suppression of the late rebellion. prefer his claim to the proceeds" of the property mentioned and described in the Court of Claims, as provided by the 3d section of the act of Congress approved March 12, 1863, and entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States."

T. LYLE DICKEY,
Assistant Attorney-General.

And for a further plea to the said petition the said defendants say that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant, at the time of the filing of his said petition, was an alien, and that the said seizure and taking possession of the said property named in the said petition, and the said several acts and doings of the defendants, their officers, servants, and agents, therein set forth, were made and done in the administration of, and in virtue and under color of, the act of Congress entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," approved M'ch 12, 1863.

Whereby and by virtue of the provisions of the act of Congress entitled "An act regulating judicial proceedings in certain cases, for the protection of officers and agents of the Government, and for the better defence of the Treasury against unlawful claims," approved July 27, 1868, the claimant is barred of his said action against the defendants.

T. LYLE DICKEY,
Assistant Attorney-General.

Filed July 19, 1869.

11 In the United States Court of Claims.

BENJAMIN ROACH
vs.
THE UNITED STATES. } 3541.

Mr. Corwine filed a motion suggesting the death of the claimant, and that Margaret E. Roach, executrix, be permitted to prosecute the suit. Motion allowed, March 21, 1874.

By the court.

A true copy of record.

12 In the United States Court of Claims.

MARGARET ROACH, EXECUTRIX OF BENJAMIN ROACH, deceased,
vs.
THE UNITED STATES. } 3541.

WARREN HALL
vs.
THE UNITED STATES. } 3232, 3279. Interpleading.

At a Court of Claims held at the Capitol, in the city of Washington, the sixth day of January, 1874, judgment was ordered to be entered up as follows:

These cases coming on to be heard upon the petitions of both claimants, and the pleas of the defendants thereto, together with the interpleading of the parties claimant, and the answers thereto between themselves, and all the proofs on both sides; it is now adjudged and decreed by the court after due consideration that the petition of the claimant, Warren Hall, be dismissed.

13 And the court now further adjudge and decree that Margaret Roach, executrix of Benjamin Roach, deceased, do have and recover of and from the United States the net proceeds of 69 bales of cotton, amounting to $7,042.83, and the ratable proportion of illegal charges

amounting to $1,869.00, amounting in the aggregate to the sum of eight thousand nine hundred and eleven dollars and eighty-three cents, ($8,911.83.)

By the court.

A true copy of record.

14 In the Court of Claims of the United States. December term, 1873.

MARGARET ROACH, EX'R'X OF BENJAMIN ROACH, dec'd, *vs.* THE UNITED STATES. } No. 3541.

From the judgment rendered in the above-entitled cause on January 6th, 1874, in favor of the claimant, the defendants, by their Attorney-General, on the 9th day of March, 1874, make application for and give notice of an appeal to the Supreme Court of the United States, the amount in controversy exceeding the sum of three thousand dollars, to wit, eight thousand nine hundred eleven dollars and eighty-three cents.

JOHN GOFORTH,
Asst. Attorney-General.

Filed March 9, 1874.

15 In the United States Court of Claims.

MARGARET ROACH, EXECUTRIX OF BENJAMIN Roach, *vs.* THE UNITED STATES.

Ordered that the appeal as prayed for be allowed.

By the court.

MARCH 9, 1874.

16 United States Court of Claims.

WARREN HALL *vs.* THE UNITED STATES.

MARGARET ROACH, EXECUTRIX OF BENJAMIN Roach, deceased, *vs.* THE UNITED STATES.

FACTS.

After these suits were brought, and while they were both pending and undetermined, the claimant, Roach, by leave of the court, filed his petition of interpleader, in which he claims that the cotton in controversy in these suits was his individual property at the date of its capture. Both causes were heard together, and the court find the facts to be as follows:

1. The claimants in both cases seek to recover the proceeds of the same lot of cotton.

2. The cotton claimed was raised, ginned, and baled on Roach's plantation, known as "Bachelor's Bend," on the Mississippi River, near Greenville, in the State of Mississippi. It was the remnant of a large crop of 1861, which had previously been secreted in a cane-thicket on the plantation to prevent its destruction by the rebels, who were burning cotton in that vicinity.

3. About the 17th of April, 1863, Lieut. William H. Barlow, acting quartermaster of the Thirty-first Missouri Infantry, under Major-General Steel, then in command of the United States forces stationed at Greenville, near Roach's plantation, seized seventy-four bales of the cotton secreted, as aforesaid, in the cane-thicket, and hauled it to the river, where it was placed on Government transports and shipped under E. M. Joel, the quartermaster of the expedition, to Milliken's Bend, and these turned over to Captain Reno, A. Q. M.

4. During the month of April Captain Reno received at Milliken's Bend, from officers, other cottons, which, with the lot above mentioned, amounted to one hundred and seven bales. In May following, he placed seventy-five bales of cotton, taken from the lot of one hundred and seven bales, on the steamer Tigris, as a barricade to enable her to run the Vicksburgh batteries. The Tigris was wrecked on her way, and sixty-eight bales out of the seventy-five on board were rescued, and shipped to W. P. Mellen, at St. Louis, Mo., and there regularly sold on the 5th of April, 1863, for the gross sum of $9,134.67, from which, among other charges, were deducted $1,929.44, custom-house fees, and $240.06 internal-revenue tax, and the proceeds, less all charges, $6,141.23, paid into the Treasury.

5. The thirty-two bales remaining of the one hundred and seven, at Milliken's Bend, after the seventy-five bales were placed on the Tigris, were shipped by Captain Reno, about the 5th of May, 1863, to Memphis, Tenn. They arrived there on the 7th, and were sent
17 forward to W. P. Mellen, supervising special agent Treasury Department at Cincinnati, where they were sold on the 15th of June, 1863, for the gross sum of $5,135.47.

The total charges on this lot were $759.55, among which were $481.96 custom-house fees, and $60.25 internal-revenue tax. The net proceeds, $4,065.92, were paid into the Treasury.

6. The court further find that, of the lot of one hundred and seven bales aforesaid, the proceeds of only one hundred bales reached the Treasury, and that the proportion of that number of bales involved in these suits is only sixty-nine bales.

7. The evidence in respect to the ownership of the cotton claimed in both petitions is not only voluminous, but exceedingly conflicting, and much of it wholly irreconcilable.

The claimant Hall is a man of color, of Indian and African descent, and claims to have been free born. His mother was of Indian extraction, residing at the time of his birth in the city of Alexandria as a free woman.

8. Hall, with other slaves, was taken from a slave-market in Washington City, D. C., by one Thomas Williams, to New Orleans, La., and there the claimant Hall, with other slaves, was sold by a trader to the claimant, Roach's father, who sent them up to the Bachelor's Bend plantation, in Mississippi. Hall was sent up to the plantation in 1844, and remained there as the slave of Roach's father until his death, in 1847, and after that as the claimant Roach's slave, who succeeded to the estate of his father, until after the cotton in question was seized in 1863. He was treated all the time as a slave, fed and clothed by his master, and

worked with the other slaves, sometimes as a field-hand and at others as a stock-minder.

9. On the contrary, Hall now claims to have been a free man while living with claimant Roach, and that, as such, Roach was justly indebted to him on account of stock, hogs, pork, &c., which he had raised on Roach's plantation, and sold and delivered to him, and that the cotton now in suit was given him by Roach in discharge of his indebtedness.

10. Hall, under this claim of title, followed the cotton after its seizure to the river, and made affidavit that he was the lawful owner thereof. Roach's overseer, McDowell, hearing of Hall's claim to the cotton, immediately contested his right to it before the officers of the United States having it in charge, and Hall afterward admited to McDowell, the overseer, that the cotton was not his, and that his oath, in which he asserted a claim thereto, was false.

Afterward, however, Hall continued to prosecute his efforts to obtain the release of the cotton, and finally brought suit to recover the proceeds in this court.

I. On the foregoing facts the court holds, as conclusions of law, that, under the laws of the State of Mississippi, the claimant Hall, in his condition of servitude, could not lawfully contract with his master, or hold the property he claims to have given in consideration of the cotton, and that no title to it was ever vested in Hall.

II. The title to said cotton at the time of its seizure was in Benjamin Roach, now deceased, and his personal representative has a right to the net proceeds of sixty-nine bales of said cotton, together with a ratable proportion of $2,708.71, improper charges on the lot of one hundred bales, and that judgment be accordingly entered in favor of Margaret Roach, executrix of Benjamin Roach, deceased.

18 MILLIGAN, J., delivered the opinion of the court:

The facts of these cases are peculiar, and, when both records are considered together, they present a conflict of testimony which, in degree, is rarely met with in courts of justice. Much of it is wholly irreconcilable, and the court, in finding the essential facts on which the cases rest, have been compelled to rely on that part of the testimony which is not directly impeached, rather than to attempt to reconcile the cross-swearing of the witnesses.

The early history of the claimant Hall, as presented in the findings, rests on the testimony of a single witness, with no attempt on the part of Roach to contradict or impeach it, or of Hall to enlarge or corroborate it.

He is simply shown to have been a man of color—of Indian and African descent. His mother resided at Alexandria, (now) Va., when he was young, and was recognized as a free woman.

Following this meager account of his early history, he next appears in a slave-market in the city of Washington, D. C., whence he was taken, with other slaves, to New Orleans, La., and there sold by a trader to the claimant Roach's father, who sent him up to Bachelor's Bend plantation, in Mississippi, in 1844. Roach held and treated him as a slave until his death, in 1847, and by succession he passed to his son, Benjamin Roach, who continued the same relation towards him until after the seizure of cotton in suit in 1863.

How it happened he was placed in a slave-market in Washington City does not appear, nor is it shown how old he was when he was transferred to New Orleans and then sold to Roach's father; but that he was bought there in 1844, and was held in servitude by the claimant's testa-

tor and his father until he was emancipated through the instrumentality of the war, is established by the overwhelming weight of evidence in these cases.

Whether Hall's long servitude, under the circumstances just detailed, was legal or illegal, we need not now decide. If it were illegal, the laws of Mississippi afforded him an ample remedy to assert and maintain his right to freedom. (Revised Code of Mississippi of 1857, chap. xxxiii, sec. 3, arts. 10 and 11, pp. 236, 237.)

The question we have to deal with is, whether or not the claimant Hall, in his condition of servitude, under the laws of the State of Mississippi, could lawfully acquire and hold the property he claims to have sold to Roach, and for which the cotton in suit is alleged to have been given.

There is no evidence that the elder Roach's title to Hall was ever called in question, or that he had notice when he purchased him in 1844 that he claimed to be free-born. His son, the claimant's testator, at the father's death, took the title by succession, and in this respect stands in his father's shoes.

Roach's title to Hall was good against all the world, so far as this record develops the facts, except Hall himself, who, as before shown, could, under the laws of the State, assert his right to freedom if he conceived himself illegally held in servitude. But no one else, under the rigorous laws of Mississippi, could set him at liberty.

The ninth article of the third section, chap. xxxiii, Revised Code of 1857, p. 236, provides: "It shall not be lawful for any person, either by will, deed, or other conveyance, directly or in trust, either express or secret, or otherwise, to make any disposition of any slave or slaves for the purpose or with the intent to emancipate such slave or slaves within the State, or to provide that any such slaves be removed to be emancipated elsewhere, or by any evasion or indirection so to
19 provide that the Colonization Society, or any donee or grantee, can accomplish the act, intent, or purpose designed to be prohibited by this article. Nor shall it be lawful for any executor, trustee, donee, legatee, or other person, under any pretense whatever, to remove any slave or slaves from this State with the intent to emancipate such slave or slaves. But all such wills, deeds, conveyances, dispositions, trusts, or other arrangements, made, had, or intended to accomplish the emancipation of any slave or slaves, after the death of the owner, no matter when made, shall be deemed and held entirely null and void, and the said slave or slaves thereby attempted or intended to be emancipated shall descend to and be distributed among the heirs at law of the testator, grantor, or owner, or otherwise disposed of as though such testator, grantor, or owner had died intestate."

Passing from the question of the power of the owner of a slave in the State of Mississippi to emancipate such slave, and leaving it to rest on the statute, we come next to consider the capacity of a person held to servitude in that State to acquire and hold property in his own right.

Here again we are confronted by the positive enactments of the State. The third article of chap. xxxiii, sec. 1, Revised Code of 1857, p. 235, declares that "All negro and mulatto slaves, in all courts of judicature in this State, shall be held, taken, and adjudged to be personal property." And article 32, section 8, same chapter, prohibits every master or employer of a slave from licensing such slave to go at large and trade as a free man, and the master or employer so offending is declared liable to indictment, and on conviction to be fined $50, which, after conviction, may be repeated as often as the offense shall be committed.

Article 35, ib., p, 243, declares: "If any owner or employer of a slave shall license or permit such slave to go at large through any county or neighborhood, and buy any article whatever for the purpose of traffic, or for the purpose of selling again, either for the owner or employer or for the benefit of the slave, on his own account, such owner or employer shall be guilty of a misdemeanor, and may be indicted therefor, and on conviction shall be fined in the sum of fifty dollars; and if, after conviction, the slave shall be found going at large as aforesaid, the owner or employer may be again punished in the same way, and so on as often as the offense shall be repeated; and, besides the foregoing penalty, any such slave may be apprehended and treated as a runaway."

Again, article 41, section 9, same chapter, ib., p. 244, declares it a high misdemeanor for "any person who shall himself, or by his agent, buy, or sell to, or receive from, any slave, any article, thing, or commodity whatever, * * * without the written consent or permission of the master, or owner, or employer, specifying what articles are permitted to be bought or sold, or permission given in person."

The penalty attached to this provision of the statute is a fine of not less than $50 or more than $500 for every offense.

Following this stringent provision of the statute comes another still more severe. The forty-seventh article makes it the duty of sheriffs, constables, coroners, justices of the peace, and town constables or marshals, on seeing any slave offering any article for sale, or carrying the same with that intention, without proper permission, to seize from and take such articles or commodities which such slave may have in his possession without authority to sell, and shall moreover inflict or order to be inflicted, on such slave any number of lashes, not exceeding thirty-nine; and every such sheriff, constable, or other officer, for every failure to enforce this provision, shall be deemed guilty of a misdemeanor.

From these provisions of the laws of Mississippi, which were in force during the greater part, if not the whole period, of Hall's servitude in the State, it seems clear the claimant Hall, in his condition of servitude, was wholly incapacitated by law to acquire and hold the stock, hogs, pork, &c., he claims to have sold to his master, and in consideration of which he received the cotton in question.

He makes no attempt to show that he had any permission, either written or in parol, as required by law, to buy or hold in his own right the property on which Roach's alleged indebtedness to him is founded; nor does he show or attempt to show that he had the license or other permission required by the twelfth section of the Code, p. 253, to remain in the State as a free man, and as such to acquire and hold property.

In every aspect of these cases, viewing them in the light of transactions under the laws of Mississippi, it seems clear the consideration claimed to have been given by Hall for the cotton fails, and on well-settled principles the alleged contract must fail with it.

Hall's title rests on his contract, and however much we may personally regret the severity of the laws of the State in respect to the colored race, and rejoice that they have passed away with the institution they were enacted to sustain, as judicial officers we are compelled to give them effect while they were in force, and therefore we hold no title to the cotton passed to Hall under his alleged contract.

Hall's petition must be dismissed, and judgment entered in favor of Margaret Roach, executrix of Benjamin Roach, deceased, for the following sums:

Net proceeds of sixty-nine bales of cotton	$7,042 83
Ratable proportion of illegal charges	1,869 00
Total	8,911 83

NOTT, J., dissenting:

I dissent from the conclusions of the court in this case, upon the following grounds:

I. The principal issue is between the claimants, Hall and Roach, and not between either of them and the Government. It is an issue between contending parties seeking the proceeds of the same captured property, but it must also be treated as an issue between master and slave in an action brought against the former to establish the freedom of the latter. When this suit was brought, all of the statutory means for establishing a slave's right to freedom according to the law of Mississippi had virtually expired, and the question must now be determined collaterally, for otherwise it cannot be determined at all. This court having exclusive jurisdiction of these suits for the proceeds of captured property, and being by statute required to try the title of every claimant, must necessarily determine every matter upon which their rights depend, provided the matter cannot be determined in another tribunal.

II. The uncontradicted evidence in the case establishes the fact that Hall was a free man residing in Virginia. At an early age he was reduced to slavery. On the one hand, it is not shown that he was, or could have been, lawfully reduced to a state of involuntary servitude; on the other, it is not possible for him to show the manner in which he was kidnapped or abducted. His own testimony was indeed offered for that purpose, but was rejected by the court as coming within the prohibition of the act June 25, 1868. (15 Stat. at L., p. 75, § 4.) The legal presumption, therefore, must be that he was unlawfully and against his will abducted and taken to Mississippi and there unlawfully detained in bondage. By such involuntary and unlawful servitude he lost none of his rights, and was free to assert and establish them at whatever time and in whatever manner he deemed most judicious. The legal fact of his right to freedom being judicially determined, the decree, on well-established principles, generally if not universally acknowledged in the Southern States, relates back to the time when he was unlawfully reduced to servitude.

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III. Assuming that Hall was free, and that this court has jurisdiction to inquire into and determine legally that fact, I think it must be held that Roach could treat him as a freeman, and that as between them he could acquire a title to this property. The statutes of Mississippi to the contrary must be confined in their operation to the citizens and inhabitants of that State, and cannot be extended to a citizen of Virginia, who, as a freeman in Virginia, or as a freeman in Mississippi, could purchase and acquire a right to property. If it was the purpose of the laws of Mississippi to allow a man to be held unlawfully in slavery, or to allow a freeman of Virginia to be debarred of his legal rights under the guise of a public policy for the fostering of slavery, it was a purpose which the courts of the United States cannot carry into effect.

IV. As to the title of Hall, it depends upon the same question. If he was free, and a decree to that effect is to relate back to the time when he was unlawfully enslaved, the law will not inquire as to the title of personal property which came into his possession during his state of

illegal servitude. His possession was not constructive possession for the master, but actual possession for himself. The subsequent possession by the Government was but continued possession for Hall as his trustee. He held the property till capture, and then the Government came and continued the possession for him, so far as possession involved legal rights. Roach never, in contemplation of law nor in fact, has disturbed the status of the property since Hall acquired possession. Therefore, it is to be considered as property in Hall's possession, whenever a decree is rendered declaring him to have been free, and where the law finds the property then there it leaves it. Roach, under the law of Mississippi, might have had a legal right to retake the property while Hall was still in his possession as a presumed slave, and this court then could not, perhaps, have disregarded the taking as void; but he cannot retake it after a decree has passed declaring that the presumed slave was free when he acquired the property.

22 In the Court of Claims.

MARGARET ROACH, EXECUTRIX OF BENJAMIN ROACH,
vs.
THE UNITED STATES. } No. 3541.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the Attorney-General on behalf of the defendants, for the allowance of an appeal, as filed in the clerk's office March 9th, 1874, and of the order of the court of March 9, 1874, allowing the same; of the finding of facts by the court and the conclusions of law thereon, on which the majority of the court founded their judgment; of the opinion of the court, and of the dissenting opinion of Judge Nott.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this seventeenth day of March, 1874.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 182. The United States, appellants, vs. Margaret Roach, extx. of Benjamin Roach, dec'd. Court of Claims. Filed 26th May, 1874.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1875.

No. 175.

WARREN HALL, APPELLANT,

vs.

THE UNITED STATES, APPELLEE.

BRIEF FOR APPELLANT.

DENVER & PECK,
Attorneys for Appellant.

Judd & Detweiler, Prs.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1875.

No. 175.

WARREN HALL, APPELLANT,

vs.

THE UNITED STATES, APPELLEE.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

This was an action brought by the appellant in the Court of Claims, in February, 1868, under the provisions of the acts of Congress relating to captured and abandoned property to recover the proceeds of seventy-three bales of cotton.

Subsequently, on the 19th of August, 1868, one Benjamin Roach filed his petition in the Court of Claims, claiming the proceeds of the same cotton. On the 9th of February, 1869, the two claimants were ordered to interplead. (Record, p. 6.)

On the 16th of February, 1869, Roach filed a petition, entitled a petition of interpleader, which does not differ from an ordinary petition in such a cause, excepting that the concluding sentence denies the right or interest of Hall in the cotton or the proceeds. And it appears to have been filed in Hall's case. (Record, pp. 6, 7.)

Hall had filed two petitions by different attorneys, but these were by consent consolidated, (Record, p. 6,) and were thereafter proceeded with as one suit.

The cases of Hall and Roach were tried together, and the same findings of fact and conclusion of law were stated in each.

The judgment of the court was that Hall's petition be dismissed, and that Roach recover $8,911.83. From that judgment Hall appeals, and the United States also appeals.

Two records have been brought up and filed, as if the cases were distinct, but the records are substantially the same.

The facts are that the cotton was grown on Roach's plantation near Greenville, in the state of Mississippi, and was taken therefrom by the United States forces on the 17th of April, 1865, and the proceeds were traced into the United States Treasury.

That Roach had been the owner was not denied, but Hall claimed to have purchased from him in settlement of an indebtedness for stock, hogs, pork, &c., sold by Hall to Roach.

Hall was a man of color, his mother was of Indian extraction, residing at the time of his birth in the city of Alexandria, (Va.,) as a free woman. Whether she had ever been a slave was not alleged or shown. Hall, with other negroes, was taken from a slave market in Washington City, D. C., to New Orleans, La., and there sold by a trader to Roach's father in 1844, who at once took him to the plantation where this cotton was raised. Hall remained on the plantation; held as a slave by the elder Roach until his death in 1847, and by the claimant, who succeeded to the estate of his father, down to the time of the seizure of the cotton.

Hall claims to have been a free man while living with Roach, and that Roach was justly indebted to him on account of stock, hogs and pork, which he had raised on the plantation, and that Roach had sold and delivered to him the cotton in question in discharge of this indebtedness.

After the seizure Hall followed the cotton and claimed it. Roach also claimed it; both brought suit for it in the Court of Claims. The evidence in regard to ownership was voluminous, exceedingly conflicting and much of it wholly irreconcilable.

Under this state of facts the Court refused to consider Hall's claim, and stated its conclusions of law as follows:

"On the foregoing facts the Court holds as conclusions of law, that under the laws of the State of Mississippi, the claimant, Hall, in his condition of servitude, could not lawfully contract with his master or hold the property he claims to have given in consideration of the cotton, and that no title to it was ever vested in Hall."

ASSIGNMENT OF ERRORS.

We assign as errors:

1st. That the court erred in dismissing the petition of Appellant Hall.

2d. That the court erred in decreeing to Roach the proceeds of the cotton.

3d. The court erred in holding that appellant was a slave.

4th. The court erred in holding that Hall could not lawfully contract with Roach.

ARGUMENT.

The court below did not investigate or decide the title of Hall, but refused it all consideration upon the ground that he was incapable of acquiring a title or making any contract.

No record has been made to enable this court to decide whether Hall ever acquired any title. He was cut off from showing this by the decision above referred to, so that the only

question now presented is, whether he could have lawfully contracted with Roach. Another trial will be necessary to determine whether he did so contract.

Upon this condition of the record I shall assume that Hall can prove that he made the contract claimed by him.

The main proposition to be decided now is, could Hall lawfully contract with Roach? We maintain—

1st. That Hall was not a slave, *i. e.*, he was not lawfully held in slavery.

2d. His being held in slavery unlawfully did not disable him from contracting with Roach.

3d. After the amnesty proclamation of President Lincoln, Hall could lawfully contract with Roach, even if he had been his lawful slave before that time.

I.

HALL WAS NOT A SLAVE—THAT IS, HE WAS NOT LAWFULLY HELD IN SLAVERY.

It will be observed that the Court of Claims, neither in its findings of fact, conclusions of law, nor opinion, declares Hall to have been a slave. In the face of the uncontroverted facts it shrank from that conclusion, but speaks of his condition of servitude as the grounds of his disqualification.

Under the laws of Mississippi his color would have raised the presumption of his being a slave. This presumption is distinctly rebutted by the facts of his birth and parentage.

It is the familiar law of slavery that the child follows the condition of the mother. Hall's mother was not only a free woman at the time of his birth, but she does not appear to have had any negro blood.

The finding of facts upon this point is as follows:

"The claimant, Hall, is a man of color of Indian and African descent, and claims to have been free-born. His

mother was of Indian extraction, residing at the time of his birth in the city of Alexandria as a free woman." (Record, p. 9.)

So far as the mother is concerned, African descent is not to be presumed, and none is shown. The appellant, therefore, stands as one born of a free mother not of African descent. Whoever alleges that he was a slave takes upon himself the burden of proof. No proof is offered to sustain the allegation, except the fact of African descent on his father's side and his having been sold, bought and held as a slave.

It will not be pretended that the condition of his father could affect the case. The maxim *partus sequitur ventrem* is the established law.

Williamson vs. *Daniel*, 12 *Wheaton R.*, *p.* 568.
Menard vs. *Aspasia*, 5 *Peters' R.*, *p.* 513.
McCutchen vs. *Marshall*, 8 *Peters' R.*, *p.* 220.
Fowler vs. *Merrill*, 11 *Howard R.*, *p.* 375.

The other facts do not strengthen the claim.

"No presumption of slavery arises against a party asserting his freedom, from the length of time however great, that he and his ancestors have been held in slavery."

Parsons on Cont., *vol.* 1, *p.* 329.
Butler vs. *Craig*, 2 *H. & McH.*, 216, 236.

"If a person held as a slave can show that his ancestor in the female line, no matter how many degrees removed, was *de jure* a free woman, he may vindicate at law his own right to freedom."

Parsons on Cont., *vol.* 1, *p.* 329.
Rawlings vs. *Boston*, 3 *H. & McH.*, 139.

The appellant's mother resided in Virginia, where he was born. She was an Indian, and her status as a free woman is clearly established by the decisions of the courts of that State.

"All Indians and their descendants in the natural line brought into Virginia since the year 1705 and their descendants in the female line, are free."

Hudgins vs. *Wright*, 1 *Hen. and Mumf.*, 134.

"The presumption was that all Indians introduced into the State at any time were free, or that if the date of their introduction did not appear, the presumption was that they were American Indians, and brought in after the act of 1705, and therefore free."

Ibid.

"If a female ancestor of a person asserting a right to freedom, whose genealogy is traced back to such ancestor through females only, be proved to have been an Indian, it seems incumbent on those who claim such person as a slave to show that such ancestor, or some female from whom she descended, was brought into Virginia between the years 1679 and 1691, and under circumstances which, according to the laws then in force, created a right to hold her in slavery."

Ibid.

To the same effect are—

Pallas et als. vs. *Hill et als.*, 2 *Hen. and Mumf.*, 149.

Gregory vs. *Bough*, 2 *Leigh.*, 686.

In addition to all these presumptions, which are sufficient in this case, none of them being rebutted, we have the declaration of the court that at the time of his birth his mother was living as a free woman. (Record, p. 9.)

Hall was therefore always a free man, or entitled to his freedom.

II.

HIS BEING HELD IN BONDAGE UNLAWFULLY DID NOT DISABLE HIM FROM CONTRACTING WITH ROACH.

Whatever disability rested upon the appellant resulted from his status as a slave. There was no middle ground; he

was either a slave or a freeman. There was no class of persons known to the law of Mississippi as free persons held in slavery, or so-called slaves.

Every man in Mississippi was entitled to the rights of the one class or subjected to the disabilities of the other. Under the opposite doctrine asserted by the Attorney General, Hall might have alternately been a free man or a slave, depending upon whether any white man for a time asserted dominion over him. At one time he could contract, and at another time he could not, depending upon whether some one was or was not claiming and exercising ownership over him.

This doctrine results from a confusion of the grounds of disability with the procedure by which the disability could be determined.

The disability resulted from slavery, and it had been decided in some of the slave States that one held as a slave could not assert his freedom in a collateral proceeding. He was required to try that issue in a direct proceeding authorized by the statutes for the purpose. If, however, in such a proceeding he showed himself free born, it not only relieved him from any disabilities henceforth, but established that he had never been subject to them.

In such a case an implied contract arises that the master shall compensate the negro for his services while held as a slave.

This harsh rule, that one unlawfully held as a slave could not acquire any rights while held in that condition, was never the law of Mississippi. The only authority cited for it, the case of Thornton *vs.* Demoss, 5 Sm. and Marsh. R., p. 618, does not sustain the proposition.

Thornton sued Demoss, the sheriff, alleging that he had bought a negro from him under an execution, and that the negro was a freeman, and that the sheriff knew the fact. After the sale the negro had obtained a writ of *habeas corpus*, and on the hearing had been declared free, and discharged.

On the trial Thornton offered the record of the *habeas corpus* proceeding to prove the negro's freedom. This record was objected to and ruled out. The Supreme Court sustained this ruling on the ground that the negro could only try his right in the manner provided by the statute, and therefore the proceedings of the court on the writ of *habeas corpus* were wholly void.

In that case the negro claimed no rights and had no interest whatever in the litigation. The only question before the court was that of the proper judicial proceeding to directly try the issue of freedom or slavery. The court held that the statutory remedy was, and that a writ of *habeas corpus* was not, the proper course.

Another case in Mississippi, that of Leiper *vs.* Hoffman *et al.*, is decisive of this.

Fanny, a negress, who was a slave, not emancipated according to the law of Mississippi, purchased a house and lot in Natchez, Miss., and took the deed jointly to herself and one Winscott, a white man. Fanny then removed to Ohio, and thereby acquired her freedom. Subsequently Winscott conveyed the property to Hoffman, who had knowledge of her rights. Fanny filed a bill to compel a conveyance to her as the true owner, and it was so decreed:

"It is contended that the complainant took nothing by the deed to her and Winscott, because she was a slave at the date of it. It is not necessary to decide what would have been the effect of the deed, if it had been made in her name alone, she being a slave, but her legal owner treating her as free, and her freedom having been subsequently established. If the deed was inoperative to convey any legal or equitable estate to her *in præsenti*, it was still effectual as a conveyance of the legal title to Winscott; and it was competent for him to hold the legal title in trust for her. Her right of present enjoyment might be prevented by her condition of slavery; but if the trust continued until that disability was removed by her admission to the rights of a free woman, her rights as a *cestui que trust* would then immediately vest, and she would be entitled to enforce them against the trustee."

Leiper vs. *Hoffman et al.*, 26 *Miss. Rep., p.* 623.

Two points of importance are to be noted in this case: 1st. That whatever right or interest the negro acquired was acquired while she was a slave; and, 2d, that having acquired her freedom in a manner wholly independent of the laws of Mississippi, she came before the court as a free woman, and the property which formerly accrued to her was decreed to her.

The same conditions exist in this case. Hall purchased the cotton while held as a slave. He afterwards became free in a manner wholly independent of the laws of Mississippi, and came into the Court of Claims as a free man to enforce a trust which arose in his favor by reason of the United States having in its possession the proceeds of cotton purchased by him while held as a slave.

The only difference between the two cases is, that the negress Fanny was a lawful slave when she purchased the property, and Hall was unlawfully held in that condition.

In the case at bar, if the conditions had remained unchanged, and the cotton had been seized by one liable to be sued, and Hall had commenced an action of trover or replevin, and attempted to have the question of his freedom determined in that collateral manner, he might have been met by the objection that he must be regarded as a slave, and therefore must first establish his right to freedom by a direct proceeding. But it would never have been held in Mississippi that, after his freedom had been so tried and determined, that he could not claim property acquired while in unlawful bondage. The case of Leiper *vs.* Hoffman *et al.*, just cited, is conclusive of this.

The cases where negroes, held as slaves unlawfully, have sued for the value of their services while so held are based upon the same principle. If by operation of law an implied contract arises in such a case, it is difficult to understand why an express contract would not be valid.

Alexander Gibson removed from Baltimore to Charleston, taking with him a young girl named Phœbe, the daugh-

ter of a free woman. The girl was held as a slave. Gibson died and his wife became his administrator. She afterwards married Clark. Phœbe brought an action by her guardian for her freedom and to recover damages. $400 damages were awarded.

"On the subject of the second objection made in the argument, (that as the defendant came to the possession of her in virtue of his marriage and without a knowledge of her right to freedom, he ought not to have been subjected to vindictive damages.) I take the rule to be that every man is presumed, nay, bound to know his own rights, and if he does another an injury, it is no excuse to say he thought he was in the legal exercise of a legal right. But on another principle I think the ward of the plaintiff entitled to recover at least a reasonable compensation for her services, even admitting that the defendant was, as is pretended, ignorant of her right to freedom. Damages are considered not only as a punishment for the wrong done but as a remuneration to the party injured."

Pepoon vs. Clarke, 1 *Vol. Const. Court Rep. S. Car., p.* 137.

"A person held in slavery but who has recovered her freedom may maintain an action of trespass for her labor and services whilst she was so held in slavery.

"The judgment on which her right to freedom was tried and established estops the defendant from controverting her right to wages from the commencement of that suit. When the plaintiff seeks to recover hire further back than the commencement of the suit in which her right to freedom is established, the defendant may again contest her right to freedom."

Catron, C. J., Matilda vs. *Crenshaw*, 4 *Yerger*, 299.

According to these authorities Hall could have brought an action to determine his freedom and to recover from Roach the value of his services while held in slavery. It is not necessary for me to claim that a good legal cause of action existed. Roach was under the strongest moral obligation to make compensation for the outrageous wrong done

to Hall by himself and his ancestor. He recognized this obligation, and met it by allowing him to take as his own a very small part of the proceeds of his own labor. If slavery had continued to this day without mitigation, I assert that no court in Christendom could be found to set aside such a contract.

One other consideration would seem to be decisive of this case. Admitting that Hall could not have brought an action of this kind and have had his status as a free man determined in such a collateral proceeding while slavery existed and he remained in bondage—it does not follow that he cannot have that question determined now in this suit.

It is true that he raises the question collaterally, but it is equally true that he could not raise it in any other way. Shortly after these occurrences, the whole institution of slavery was swept away, and the appellant was fully restored to freedom. There is not and never was any direct proceeding known to the law of Mississippi for determining whether a man was lawfully held as a slave at some time in the past. From the moment the appellant became a free man in fact, the foundation for any direct proceeding to establish his freedom was removed and he could bring no action.

After he had been deprived of all opportunity to bring a direct action to establish his freedom, his former disability as a slave was set up in the Court of Claims. And he must try the issue there or never be able to try it at all.

The contrary doctrine would lead to the conclusion that because the appellant while held as a slave did not bring a direct action to establish his freedom, he is now estopped to show it in any other proceeding.

Such an estoppel would be monstrous.

We would have the anomaly of a free man once held in slavery, now denied all opportunity of showing that he had been free, by a direct action, and estopped from showing it in any other way.

The Court of Claims has jurisdiction to determine the question of ownership; it must, therefore, decide every matter necessary to the determination of that issue.

It will be observed that Hall was not subject to the disabilities attempted to be imposed upon him by the laws of Mississippi, because he never placed himself within the jurisdiction of those laws. He was kidnapped and carried into the State, and held there by force. While in this condition he could not be subjected to the disabilities of statutes which in their nature and operation were intended to apply to negroes belonging in the State.

The position of the Attorney General, that a mere condition of servitude, no matter how unlawfully imposed, must, while it exists, carry with it all the disabilities of actual slavery, cannot be maintained in such a case as this.

Hall, a free man, living in Virginia, could not be taken from his home to this city, thence to Mississippi, and be reduced to slavery by force, even for a time. No such disabilities could lawfully exist in such a case for a moment.

No person in this country can be deprived of his liberty without due process of law.

Amendment to Constitution, Art. V.

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

Constitution, Art. IV., Sec. 2.

What becomes of these protections and guaranties if a free man can be taken from Virginia to Mississippi and there held in slavery by force, and be subjected in law to all the disabilities of a slave?

The decision in the Dred Scott case furnishes no reply. It was there decided that "a free negro of the African race whose ancestors were brought to this country and sold as slaves, is not a citizen within the meaning of the Constitution."

There is neither proof nor presumption that Hall was such a negro.

These guarantees of the Constitution cannot be made to turn upon any technical definition of the words "person" or "citizen." They are the written expression of fundamental principles which are the foundation of all our laws and institutions, and they would exist in full force if they had never been expressed.

III.

After the amnesty proclamation of President Lincoln Hall could lawfully contract with Roach, even if he had been his slave before that time.

The precise time when the alleged contract was made is not stated in the findings, but it must have been a short time prior to the seizure of the cotton, which was on the 17th of April, 1863, (Record, p. 8.)

On the 22d of September, 1862, the President of the United States declared by proclamation—

"That on the first day of January, in the year of our Lord one thousand eight hundred and sixty-three, all persons held as slaves within any State or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free; and the Executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons, and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom."

Stats. at Large, *Vol.* 12, *p.* 1267.

On the first day of January, 1863, the President issued a further proclamation to the following effect:

"Now, therefore, I, Abraham Lincoln, President of the United States, by virtue of the power in me vested as Com-

of Mississippi which controlled them, that was just as effective after the occupation as before.

If Hall became free from the moment of the occupation by the United States armies, regardless of the wishes of his master; and the Supreme Court of Mississippi has so decided in the case in 43 Miss. R., p. 102, what was there to prevent the owner from co-operating with the Government in its policy by recognizing his rights as a free man before that time. And especially is this so, when we remember that Hall was all the time unlawfully held as a slave.

The appellee is driven to maintain that, notwithstanding Hall was justly entitled to his freedom, notwithstanding the proclamations of emancipation, and the advance of the Union armies, which were to destroy the institution of slavery as they advanced, notwithstanding the legal and strong moral obligation on the part of Roach to compensate Hall for his years of unrequited labor, an agreement between them for that purpose must be held void in a court of the United States, because Hall did not bring a direct action under the Mississippi statute to establish his freedom.

The decisions of the highest courts of the southern States sustain my position in this case, or go far beyond it.

"The emancipation of slaves in Alabama is held to relate back to the first of January, 1863. The struggle afterwards was merely an effort to prevent the proclamation from being carried into effect, and the total failure of the struggle refers emancipation back to that date.

Morgan Adm'r vs. *Nelson Adm'r*, 43 *Ala. R., p.* 587.

DENVER & PECK,
Attorneys for Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

WARREN HALL, APPELLANT,
vs.
THE UNITED STATES. } No. 175.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the United States.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

WARREN HALL, APPELLANT,
vs.
THE UNITED STATES. } No. 175.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the United States.

I.

Hall was legally incapable of taking the title he asserts to this cotton.

Whatever his birth-rights, his *status* during his twenty years' residence on the Bachelor's Bend plantation was that of a slave; his condition was, in fact, one of servitude.

His was a *status* legal in the State in which he was until terminated by the mode its laws provided, though it might be held illegal outside the limits of Mississippi. 1 Burg. Col. & For. Law., 738.

Rights of citizenship were wholly dependent upon State laws. Dred Scott Case, 19 Howard, 393.

And, of course, in construing a contract by the *lex loci*, the laws there must determine the capacity of the contracting parties. Emerson *v.* Howland, 1 Mason, 51.

A slave cannot contract. 1 Mason, 51; Hall *v.* Mullin, 5 Har. & J., 190; Gregg *v.* Thompson, 2 Const. Ct. Rep., 331; Jenkins *v.* Brown, 6 Humph., 299; Jackson *v.* Lervy, 5 Cowen, 397; Bland *v.* Dowling, 9 Gill & J., 27; Gist *v.* Toohey, 2 Rich., 425; Peter *v.* Hargrave, 5 Grattan, 13; Lucy *v.* Denham, 4 Munr., 169.

A negro held as a slave is presumed to be one. Hall *v.* Mullin, 5 Har. & J., 190; Hudgkins *v.* Wright, 1 Hen. & Mun., 139; Gentry *v.* McMinnis, 3 Dana, 385; Thornton *v.* Demoss, 5 S. & M., 618.

All persons held in the *status* of slavery are slaves, incapable of contracting, whatever may be their *right* to freedom. Peter *v.* Hargrave, 5 Grattan, 13; Austin's Prov. of Jur., 279, note, (first ed.,) being note to c. v, p. 220 *et seq.*, in ed. of 1869.

The only difference between men, in this respect, is that the color of a negro in a State where slavery exists is presumptive evidence of servitude, "of property in some one," (Thornton *v.* Demoss, 5 Sm. & Mar., 618; Hook *v.* Nancy, 2 Munf., 379;) while a man of apparently Caucasian blood is presumptively free, *unless found in a position of actual servitude.*

But if found in that condition, he is to be deemed a slave until his freedom is adjudged in a suit for it, which is the only one he can bring. Hutchinson's Mississippi Code, 523; 5 S. & M., 618; Peters *v.* Van Lear, 4 Gill, 249; Berard *v.* Berard, 9 La., 156; Union Bank *v.* Benham, 23 Ala., 143; Queen *v.* Neale, 3 Har. & J., 158; Phillis *v.* Gentin, 9 La., 208; 5 Grattan, 14; Wood-

folk *v.* Sweetser, 2 Humph., 88, 96; Pleasants *v.* Pleasants, 2 Call., 250; Paul *v.* Mingo, 4 Leigh, 163; Henry *v.* Bollar, 7 Leigh, 19.

This suit for freedom is allowed only to those actually free, who are wrongfully detained in bondage. Henry *v.* Nunn., 11 B. Monr., 239, 244.

And so long as the party is content to remain in servitude, nobody else can maintain the action for him. Calvert *v.* Trinoleon, 15 Misso., 595.

The issue in all such cases is the right of the claimant to liberty, and the burden of proving the claim is upon him—not enough to show a want of title in the defendant to the suit. Vaughan *v.* Phoebe, Mart. & Yerg., 20; 9 La., 157; Mary *v.* Morris, 7 La., 135; 1 Hen. & Mun., 134; 2 Munf., 379; 3 Dana, 385.

And almost all the cases agree that, even if the result prove the claimant free, the *mesne* profits of his labor cannot be recovered. 5 Grattan, 12; 2 Call, 319; 4 Leigh, 163; 7 Leigh, 19.

That the legislation of Mississippi conformed to the doctrines stated in the above-cited decisions appears by consulting the Revised Code of Miss. of 1857, C. XXXIII, p. 235 *et seq.*

Consequently no such contract as Hall sets up could give him title to the cotton of which he claims the proceeds.

This does not at all affect the question whether, after the abolition of slavery, he might not have recovered damages or value for his services, if entitled to freedom when compelled to render them. It simply holds that, being in fact in a condition of servitude, he was incapa-

ble of making a contract for this particular property. We have only considered the question of law presented, disregarding the utter absurdity of the petitioner's claim upon the evidence.

EDWIN B. SMITH,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

No. 182.

THE UNITED STATES, Appellants,

vs.

MARGARET E. ROACH, Executrix of Benjamin Roach.

APPEAL FROM THE COURT OF CLAIMS.

Brief for Appellee.

T. H. N. McPHERSON,
ATTORNEY FOR APPELLEE.

WASHINGTON, D. C.:
Printed by W. H. Moore, 511 Eleventh street.
1876.

In the Supreme Court of the United States.

October Term, 1875.

No. 182.

THE UNITED STATES, APPELLANTS,

vs.

MARGARET E. ROACH, EXECUTRIX OF BENJAMIN ROACH.

Appeal from the Court of Claims.

Brief for Appellee.

The Court of Claims in their findings of facts declare that Hall was the slave of Roach from 1844 until after the *cotton in question was* seized in 1863; that he was treated all the time as a slave, fed and clothed by his master and worked with the other slaves sometimes as a field hand, and others as a stock minder.—(Record pp. 8 and 9.) And stated the following conclusions of law:

"I. On the foregoing facts the Court held, as conclusions of law, that under the laws of the State of Mississippi the claimant, Hall, in his condition of servitude, could not *lawfully contract* with his master or hold the property he claims to have given in consideration of *the cotton*, and that no *title* to it was vested in Hall.

"II. The title to said cotton at the time of its seizure was in Benjamin Roach, now deceased, and his personal representative has a right to the net proceeds of sixty-nine bales of said cotton, together with a ratable proportion of

$2,708.71 improper charges on the lot of one hundred bales, and that judgment be accordingly entered in favor of Margaret Roach, executrix of Benjamin Roach, deceased," (Record, p. 9.)

And the Court's able opinion, (Record, pp. 9 to 12,) clearly establishes the above conclusions of law,—which brings us to consider the following propositions:

1st. The disability of a slave.

2d. His right to institute suit for freedom, if he believed himself held in illegal bondage.

3d. His inability to contract or be contracted with, and *especially* in the State of Mississippi.

The Court having found that Hall was the slave of Roach, (Record, p. 8,) no other legal questions can be raised and considered.

ARGUMENT.

I.

The Disability of a Slave.

Hall being a slave had not the legal capacity to acquire and hold the title, he asserts, to this cotton.

A slave is one who is in the power of a master to whom he belongs. (Civil Code of La., Acts 35 and 173.)

Among the Romans a slave was classed as a thing; *Res.* He was "*Homo sed non persona.*" (Heinc. Elm. Jur., Lib. I, 75.)

But in the United States his existence as a person was recognized and protected by the law. (1 Hawk., No. C., 217; 2 id., 454; 1 Ala., 8; 1 Miss., 83; id., 518; 2 Va., Cas., 694; 5 Rana Va., 678; 1 Yerg., Tenn., 156; 11 Humphr., Tenn., 172.)

He had no political or civil rights while subject to his condition of servitude. (Amy vs. Smith, 1 Litt., 326; Lenoir vs. Sylvester, 1 Bail, So. C., 633; Catche vs. The

Circuit Court, 1 Miss., 608; Vincent vs. Duncan, 2 Miss., 214; Hall vs. Mullen, 5 How. and J. Md., 190; The State vs. Hart, 4 Ird., No. C., 256; Gist v. Coby, 2 Rich. So. C., 244; Jenkins v. Brown, 6 Humph., Tenn., 299.)

Nor could he acquire property; his acquisitions belonged to his master. (5 Cow. N. Y., 397; 2 Hill, ch. So. C., 397; 1 Bail, So. C., 633; 2 Rich, So. C., 424; 6 Humph., Tenn., 299; 2 Ala., 320; 5 B. Mour., Ky., 186.)

Long servitude and color are presumptive evidence of slavery in a slave State. Renuck vs. Chloe, 1 Miss., 197; Macon and W. R. R. Co. vs. Holt, 8 Ga., 157; Davis vs. Curry, 2 Bibb., 238; Gibbons vs. Morse, 2 Hals., 253; 3 Ibid., 375; Kegler vs. Miles, Marb. & Yerg., 427; Tritegot vs. Byers, 5 Cowen, 480; Adele vs. Beauregard, 1 Mart., 183; Gober vs. Gober, 2 Hayw., 170; 3 Dana, 382, 6 Gill. and I., 136, 1 Dev., 376, 5 Sm. and Mar., 609, 4 Har. and McHen. 295; Barke vs. Goe, 6 Gill. and J. Md., 136; Rawlings vs. Brown, 3 Harv. and Mich., Md., 139; Kegler vs. Miles, Mart. and Yerg., 427.) The same rule prevailed in New Jersey, Fox vs. Lambson, 3 Halst., N. J., 275.

The color, whether white or black, is a presumption for or against his freedom. (Hook vs. Nancy Pagee and her children, 2 Meuf., 379; Hudgins vs. Wright, 1 Hen. and M., 133; Gentry vs. Polly McMinnis, 3 Dana, 385.)

II.

His Right to Institute Suit for his Freedom if he Believed Himself Held in Illegal Bondage.

If Hall believed himself held in illegal bondage, he had the right to institute suit for his freedom.

(Bland & Woolfolk vs. Negro Beverly Dowling, 9 Gill. and J., 19; Amy vs. Smith, 1 Litt., 326; Catch *et. al.* vs. The Circuit Court &c., 1 Miss., 608; Matilda vs. Crenshaw, 4 Yerg., 303; Susan vs. Wells, 3 Bev., 11, 4 Gill,

249; Berard vs. Berard, 9 Louis, 156; Free Lucy, &c. vs. Denham, Adm., 4 Mour., 169.)

This was the rule of the civil law. Taylor's Elem. of Civil Law, 429, Heineccius gives the reason, *ut nec servus, qui personæ plane non est, agere possit*, Elem. Jur. *de* Pand., Pars. ii. Lib. v, 14. The suit for freedom was termed "*Actio de liberali causa.*" (Dig. Lib. iv, 8–32.

It was the same with ancient Britons. (Fleta. Lib. iv, chap. xi, 1–4; Germans, Franks and other European nations. Potgresser Lib. ii, chap. i, 17–37.)

The slave must remove the *onus probandi* which is upon him. (Vaughn vs. Phebe, Marts and Yerg, 20; Berard vs. Berard, 9 Louisiana R., 157; Mary vs. Morris *et. al.*, 7 Louis R., 135; Hudgins vs. Wright, 1 Murf., 134, 138.)

Such was also the civil law. (Dig. 40, 12, 7, 41.)

Negroes in Mississippi were held *prima facie* property and slaves, and if their exemption from servitude was attempted to be shown or asserted, the mode pointed out in the statute must be strictly pursued, and it was the only mode in which freedom could be asserted in Mississippi, (Thornton vs. Demoss, 5 Smedes & Marsh, 609.)

Hall had therefore the *exclusive right* to assert and maintain his claim for freedom while held in a state of bondage in Mississippi. See Revised Code of Mississippi of 1857, Chap. xxxiii, sec. 3, art. 10 and 11, pp. 236 and 237:

"ART. 10. Any person in this State who shall conceive himself illegally detained as a slave in the possession of another, and claiming to be free, may proceed in the circuit court of the county where the master may reside, by petition, in which, after notice to the master, an issue shall be made up to try the question of freedom before a jury, but if the master be a non-resident, the proceeding may be instituted in the county in which such person may be held in slavery, where he may also proceed if the master, although a resident, have his plantation in that county. And the master, if the slave be in his possession, shall enter into bond payable to the State of Mississippi, in such sum and with such sufficient sureties as may be approved by the court before

which such proceedings is pending, or by any circuit judge or judge of the high court of errors and appeals in vacation, conditioned that such person claiming his freedom shall be forthcoming and subject to the order of such court, and that he will abide by the sentence or decree of this court in the premises; in which case such slave shall remain in his possession until the termination of the suit, but on failure to give such bond, the court or judge shall order such slave into custody of the sheriff, to be by him kept at the expense of the master until security be given or until the suit be determined," &c.

"Art. 11. If any person shall desire to institute proceedings for his or her freedom, when there is no court in session or during vacation, the petition may be presented to a judge of the circuit court or to a judge of the high court of errors and appeals, who shall thereon endorse his fiat to the clerk of the proper court, directing that a notice or citation be issued for the master or owner of such petitioner, which shall be directed to the sheriff of the proper county, and shall be executed as any other process to bring a party into court; and such judge shall also direct by his fiat that the sheriff take such petitioner into his custody, and hold him until the master execute the bond required by the preceeding article of this act; and if such petitioner be not in the possession of his master or owner, he shall execute bond as required in the preceding article in like cases at time of presenting his petition to the judge."

No one else under the rigorous laws of Mississippi could set him at liberty.—(See Revised Code, 1857, Sec. 3, Art. 9, p 236.)

"It shall not be lawful for any person, either by will, deed or other conveyance, directly or in trust, either express or secret or otherwise, to make any disposition of any slave or slaves for the purpose or with the intent to emancipate such slave or slaves in this State, or to provide that such slaves be removed to be emancipated elsewhere, or by any evasion or indirection so to provide that the colonization society, or any donee or grantee can accomplish the act, intent or purpose designed to be prohibited by this article. Nor shall it be lawful for any executor, trustee, donee, legatee, or other person under any pretence whatsoever to remove any slave or slaves. But all such wills,

deeds, conveyances, dispositions, trusts, or other arrangements, made, had or intended to accomplish the emancipation of any slave or slaves after the death of the owner, no matter when made, shall be deemed and held entirely null and void, and the said slave or slaves thereby attempted or intended to be emancipated, shall descend to and be distributed among the heirs at law of the testator, grantor, owner or otherwise disposed of as though such testator, grantor, or owner died intestate."

No evidence was presented by Hall that Roach's title to him was ever called in question during his *long servitude*, from 1844 to 1863.—(Record p. 8.)

Nor did Hall attempt to show that he had the *license* or other permission to remain in the State of Mississippi as a freeman, as required by the 12th Sec. of the Revised Code of Miss., p. 253.

III.

His inability to Contract or be Contracted with, and especially in the State of Mississippi.

Hall being a slave, had not the ability to contract or be contracted with. Hall vs. Mullin, 5 Har. & J., 190; Gregg vs. Thompson, 2 Rep., Con. Ct., S. C., 331; Jenkins vs. Brown, 6 Hump., 299, 5 Cowan, 397; Emerson vs. Howland, et al, 1 Mason, 51; Bland and others vs. Dowling, 9 Gill & J., 27.

He could make no binding contract with his master, 11 B. Mour., Ky., 239; 9 Gill & J., Md., 19; 3 Bos. & P., 69; 8 Mart., La., 161.

The *agreement* between the Roman master and his slave, to allow the latter to purchase his freedom with his *peculium*, was a privilege *ex gratia*, in which the slave acquired nothing by the contract. "Servus nec persona nec sibi quiquam adquirit, sed domino. Ergo et stipulatione sibi nihil." Heinec, Elem. Jur, Lib. iii, tit. xviii. Potgiers lib. 2, Cap. 10; Murat Antig, Ital., Vol. 1, p. 768.

The alleged contract between Hall and Roach, if it did

exist at all, was nothing more or less than a *nudum pactum*, for no consideration could have passed.

The validity of a contract depends upon the law of the place where it has been made, if valid there, it is valid in general everywhere; and *vice versa*, if void or illegal there it is in general void everywhere. Story Confl. of L., 242, 243; Bank of U. S. vs. Donnally, 8 Pet., 361; Simons v. Little, 9 N. H., 271; Dunscomb v. Banker, 2 Mets., Mass. 8.

One general principle predominates in all the States, and in the British, Spanish, and Portuguese West Indies, and that is, that a slave cannot make a *contract*, (1 Maryland Rep., 561, 563;) not even a contract of matrimony, (Ibid, Stephens on Slavery, pp. 59, 60; Wraxall's Memoirs, Vol. 2, Letter 21.) And in many of the States this principle has become part of the Statute Law. (See James' Dig., 385–6; Prince's Dig., 453; 2 Litt. & Levi Dig., 1159; Haywood's Manuel, 525; Miss. Rev. Code 1857, Sec. 8, pp. 242, 243; Martin's Dig., 616.) And it is stated in Goodwin on Slavery, p. 43, that a slave cannot acquire property. And the same principle is stated in Blickell's West Indies as they are, p. 66; Nile's Reg., Vol. 17, p. 200; Ibid, Vol. 20, 273.

The legislative enactments in the several States in the days of slavery prohibited the slave from acquiring or holding property or hiring himself, &c. (James S. C. Dig., 385; Prince's Geo. Dig., 453; Ky. 2 Litt. & Levi Dig., 1150; 1 Rev. Code of Va., 374; *Miss. Rev. Code*, 1857, pp. 242, 243, 244; Laws of Tenn., Act 23, 1813, ch. 135; No. Car. Haywood Manual, 526; Rev. Stat. of Missouri, p. 581; Civil Code of La., 175.)

A *slave* is in absolute bondage; he has no civil rights, and can hold no property, except at the will and pleasure of his master. (Branden et al. vs. Planters and Merchants Bank of Huntsville, Jan. T., 1828, 1 Stewart Rep., 320; Bynum vs. Boswick, 4 Dessauss, 266.)

Under the Laws of Mississippi, slaves could not legally

acquire and hold property, (Revised Code, 1857, 3d Art., chap. xxxiii, sec. 1, page 235,) declares that "all negro and mulatto slaves in all courts of judicature in this State, shall be held, taken and adjudged to be personal property."

And article 32, sec. 8, same chapter, p. 242, declares:

"If any master, or hirer, or employer of a slave, shall license such slave to go at large and trade as freemen, either in writing or verbally, the master or employer so offending shall be liable to be indicted therefor; and on conviction shall be fined in the sum of fifty dollars * * and so on for like offence the same prosecution."

Article 35, Ib., p. 243:

"If any owner or employer of a slave shall license or permit such slave to go at large through any county or neighborhood and buy any article whatever for the purpose of traffic, or for the purpose of selling again, either for the owner or employee, or for the benefit of the slave, or on his own account, such owner or employee, shall be guilty of a misdemeanor, and may be indicted therefor, and on conviction, shall be fined in the sum of fifty dollars." * *

Article 41, sec. 9, p. 244:

"Any person who shall himself, or by his agent, buy or sell to, or receive from, any slave, any article, thing, or commodity whatever, or any wines, spirituous or intoxicating liquors, without the written consent or permission of the master, owner or employer, specifying what articles are permitted to be bought or sold or permission given in person, shall be guilty of a high misdemeanor, and may be indicted therefor, before any court having cognizance, and on conviction shall be fined in a sum not less than fifty dollars nor more than five hundred dollars for every offence, for the use of the corporation, if the offence be committed within the limits of any incorporated city or town, or if not, then said fine shall be appropriated as hereafter directed. And it shall be the duty of the mayor or chief magistrate of every incorporated city or town, and of all the subordinate officers of such corporation, to see that this article is vigilantly enforced." * * *

And the further stringent article 47, p. 246, declares that—

"It shall be the duty of sheriffs, coroners, constables, justices of the peace and town constables, or marshals, on seeing any slave offering any article for sale, or carrying the same with that intention, without proper permission, to seize from and take all such articles or commodities whatsoever which such slave may have in his possession, without authority to sell, and shall moreover inflict or order to be inflicted on such slave any number of lashes not exceeding thirty-nine, and every such sheriff, constable or other officer, for every failure to enforce this provision, shall be deemed guilty of a misdemeanor; and in like manner, every citizen on seeing any slave carrying or offering any article for sale without proper permission, may seize the same to his own use with the approbation of any justice of the place, mayor or other chief magistrate of a town, before whom such slave shall be taken, who shall also order such slave to be punished as above in this article described."

In Hall's brief, the proposition that—

"After the Amnesty (emancipation) Proclamation of President Lincoln, Hall could lawfully contract with Roach even if he had been his slave before that time," is discussed by Hall's counsel, (Brief p. 13,) need not be controverted, inasmuch as we have nothing to do with Hall's ability to contract with Roach, or any one else, after the cotton in question was seized and his emancipation had taken effect in 1863.

And on same page counsel for Hall further declares that "the precise time when the alleged contract was made is not stated in the findings;" of course the Court did not state any time when the "alleged contract" was made, because they decreed that the title to the cotton was in Roach. (Record, p. 9.)

The time of Hall's alleged contract with Roach for this cotton was fixed in *May or June*, 1862, at his "Bachelor Bend" plantation, near Greenville, Mississippi, by Hall's testimony, and that Roach was *present*, but Roach established an *alibi* to the satisfaction of the Court that he was in New Orleans at the same time; and it was further established by the most overwhelming weight of evidence that

Hall was at the same time, as he was before and afterwards, the slave of Roach, (Record, pp. 8, 9,) and had not the ability to contract, or to even acquire and hold property under the then existing laws of Mississippi, and the adjudged cases above referred to. But the Court's finding of facts (Record, p. 9) further set this matter at rest, for they find that Hall admitted to McDowell, Roach's overseer, that the cotton was not his, and that his oath on which he asserted a claim thereto, was *false.*

For further argument as to Hall's *inability* to acquire title to the cotton in question, his legal *status* in Mississippi and the *disabilities* flowing therefrom, I have the honor to refer to the able brief of the learned Assistant Attorney-General in Hall's case, and the authorities therein cited, who "only considered the question of law presented, disregarding the utter absurdity of the petitioner's (Hall's) claim upon the evidence."

The dissenting opinion of the Court, (Roach's Record, 12,) being based on assumptions which could hardly have existed, need not be followed, we are not here for the purpose of defending the laws of Mississippi, if they were enacted for fostering slavery, nor to put them to the test of the crucible of public opinion of to-day; with that we have nothing to do. The institution of slavery and the laws which were enacted to perpetuate it, have passed away, but when they did exist, they received the protection of the Constitution, (Art. 4, Sec. 2;) the support of Congress, (Acts 12 Feb., 1793, March 3, 1801, and Sept. 18, 1850,) and were enforced by this tribunal, (Dred Scott case, 19 Howard, p. 393,) and at this late day the public policy which gave them force and effect, cannot be judicially considered.

T. H. N. McPHERSON,

Attorney for Appellee.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

No. 182.

THE UNITED STATES, Appellants,

vs.

MARGARET E. ROACH, Executrix of BENJAMIN ROACH.

APPEAL FROM THE COURT OF CLAIMS.

Additional Brief for Appellee.

T. H. N. McPHERSON,
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The Court below find that Hall was the slave of Roach from 1844 until after the *cotton in question* was seized in 1863, and that he remained on Roach's "Batchelor Bend" plantation, in the State of Mississippi, during the period of his servitude, (Record, p. 8.)

I.

COLOR AND LONG SERVITUDE PRIMA FACIE EVIDENCE OF SLAVERY.

Aside from the above finding of facts, it has been judicially decreed, in a large number of cases, that *color* and *long possession* are *prima facie* evidence of slavery in a slave State.

In the case of Thorton vs. Demoss, 5 Smede & Marshall's Miss. Rept., p. 609, Chief Justice Sharkey said:

"Negroes, although persons for some purposes, are generally regarded as property, and excepted out of the general legislation

in regard to persons, unless specially included. The *color* is *prima facie* evidence of liability to servitude. It is *prima facie* evidence of property in some one, and a specific remedy is provided for removing the presumption, that remedy necessarily excludes every other and must be strictly pursued."

In Randal vs. The State, 4 Smede & Marshall's Rpts., p. 349, the Court said:

"The laws of this State presume a negro, *prima facie*, to be a slave, and make it the duty of every citizen who finds a slave at large, without a permit from his owner, to deliver him to the nearest justice of the peace for commitment."

In the case of the Macon & Western Railroad Company vs. Philip Holt, 8 Geo. Repts., p. 157, the Court said:

"The *black color* of the African race is presumptive evidence of slavery."

19 Martin Law R., 648; Fox vs. Lambson, 3 Halst., 275; Ghober vs. Ghober, 2 Hayw., 170; Burke vs. Joe, 6 Gill & J., 136; Nelson vs. Wetmore, 1 Richardson, 218.

In Fox vs. Lambson, 3 Halst. New Jersey Repts., 275, the Court said:

"It is a settled rule in our courts on questions of evidence that the black color is proof of slavery. Gibbons vs. Moore, 2 Halst., 264, * * page 278, *possession* is *prima facie* evidence of *title* to *property* both *real* and *personal*, and as *slaves* are deemed *personal property*, the rule is justly applied to them."

In Gentry vs. McMinnis, 3 Dana Reports, p. 385, the Court held:

"All persons of blood not less than ¼ African are (in Virginia and Kentucky) *prima facie* deemed slaves; and *e converso* whites and those less than ¼ African, are *prima facie* free. All negroes are deemed slaves."

Same, p. 384:

"It is a general rule, that quiet possession for 30 years (or even less) in the absence of countervailing circumstances, creates the presumption of title."

In Newby vs. Blakey, 3 Hen. & Munf. Virginia Reports, pp. 57, &c., the Supreme Court of Appeals in Va., decided, that

"A plaintiff in detinue, who, after having had five years peace-

ful possession of a slave, acquired without fraud or force, loses that possession, may regain it on the mere ground of his previous possession: on the same principle that a defendant may protect himself on that length of possession, under the act of limitations."

Duvol vs. Bibb, 3 Call's Rep., p. 362.

In the case of Shelby vs. Guy, 11 Wheaton Reports, p. 371, this court said:

"In the case of Newby vs. Blakley, (3 Hen. & Munf., 57,) a case strikingly resembling this in its circumstances, it was adjudged, that a plaintiff in Virginia may recover in detinue upon *five years* peaceable possession of a slave acquired without force or fraud. And four months after that decision, and obviously without being apprized of it, this Court, in the case of Brent vs. Chapman, maintained the same doctrine." (5 Cranch's Rep., 358.)

"It follows, we think, that on the same principle such a possession must constitute a good defence in Tennessee to preclude the defendant from availing himself of the benefit of that evidence which would have sustained an action for the same property by the person from whom he purchased it would be to convert a good and valid title in Virginia into a defeasible title in Tennessee; a sufficient title in a vendor into a defeasible title in his vendee; and by an indirect operation to make the seller liable when a direct action could not have been maintained against him to recover the property sold."

Five years possession of slaves constitutes a title upon which the possessor may recover detinue. See Shelby vs. Guy, (1826,) 11 *Wheat. Rep.*, 361; Brent vs. Chapman, 5 *Cranch Reps.*, 358; Auld vs. Norwood, 5 *Cranch Reps.*, 361; Garth's Ex'rs vs Barksdale, 5 *Munf. Rep.*, 101; Carter vs. Carter, 5 *Munf. Rep.*, 108; *and* the same principle has been adopted in Kentucky. Smart vs. Baugh, 3 *J. J. Marshall's Rep.*, 363; *Orr et al.* vs. *Pickett, same page*, 268.

Three years (in Tennessee) adverse possession of a slave vests the right of property in the possessor. Pastel vs. Badget, 4 *Yerger's Tenn. Repts., p.* 174.

The adverse possession of a slave, so long as to bar any action which could be brought against the possession, vests in him an absolute right of property. *Kegler* vs. *Miles, Jan.* 1, 1825; *Martin's & Yerger's Tenn. Repts.*, 426, *and authorities there cited.*

In David Kegler vs. Thomas Miles, Martin's & Yerger's Reports, pp. 426, 430, the Supreme Court of Tennnessee held that

"Three years' (adverse) possession of the slave in question, acquired without fraud or force, gave to David Kegler a *legal title* to her, and that the plaintiff ought recover in this action. We feel it our duty, as also our inclination, to follow the decisions of sister States where slavery exists. Such has been the course of decision in *Virginia.*

"Newby vs. Blakly, 3 Hen. and Munf., pp. 56, 66. In the Supreme Court of the United States, Brent vs. Chapman, 5 Cran. R., 358, followed in Guy vs. Sheby, 11 Wheat., 361, and of Kentucky, in Thompson vs. Caldwell, 3 Littell R., 136."

In Tongott vs. Byers, 5 Cowan Reports, pp. 480 to 483, an action of assumpsit for the work and labor of the plaintiff by his slave.

The facts: Peter Gilbert, a black man, (30 years of age,) previous to the 28th May, 1819, worked for one Paff as a slave, and Paff claimed him as such, about 2½ years; that Paff then promised him that if he would stay and work on his farm (which he had then leased to the plaintiff) 5 years, he should be free. The lease of the farm contained an agreement between Paff and the plaintiff, that Paff should leave Peter with the plaintiff during his natural life, and that if he should be sold in two years, one-half the purchase money should be paid to Paff. The lease of the farm was for 2½ years; Peter worked on the farm for five years, (in the service of the plaintiff, who continued in possession,) as proposed by Paff, with a view to his freedom; but no written manumission was shown. After this, Peter left the plaintiff's service and worked for the defendant. The Court said:

"The evidence was, *prima facie*, sufficient to establish the fact that Peter was the slave of Paff,—Peter himself testified that he lived with Paff, and worked with him on his farm as a slave; and that Paff claimed his services as a slave. This was sufficient, in the first instance, *without tracing him back to his infancy*, and showing that he was born a slave. That the contract between Paff and the plaintiff amounted to this sale of the negro, there can be no doubt. The latter (plaintiff) was to have the services of Peter during his natural life; but if he sold him within two years, he was to pay one-half the amount received to plaintiff. The plaintiff did not sell him; and his interest became absolute and exclusive. * * * It transferred all the interest of Paff, whatever that was. * * * The parol agreement of Paff to manumit Peter, if he served faithfully for five years, was not a valid manumission. Such a manumission can only be in writing." (Kettle-

tas vs. Fleet, 7 John, 324; Wells v. Lane, 9 John, 144; 14 Id., 324.)

The adverse possession of a slave so long as to bar any action which could be brought against the possessor, vests in him an *absolute right of property.* Thompson vs. Caldwell, 3 Littell's Kentucky Repts, p. 136.

II.

SLAVES CANNOT CONTRACT.

Slaves in this country are wholly incapable of contracting for themselves, and cannot acquire property either by purchase or descent, and it follows as a necessary inference that if they cannot acquire title they cannot communicate title, and this proposition is supported by authority. See Reeves Domestic Relations, 344; 1 Bancroft History, 187; Livandais vs. Fon, 8 Martin's Repts., 161; Grigg vs. Thompson, 2 Miles, 2 S. C. Con. Repts., 331; Cam. vs. Nor., N. C. Rep., 353; 5 Har. and John., 190; 2d par. Civil Code of Louisiana, Art. 175; 2 Kent Com., 252.

Emerson vs. Howland, 1 Mason, p. 51, Justice Story said,

"The contract for his wages was entered into by his owner in Virginia, and must therefore be construed with reference to the *Lex loci contractus.* In Virginia slavery is expressly recognized, and the rights founded upon it are incorporated into the whole system of the laws of that State. The *owner* of the *slave* has the *most complete* and *perfect property in him.* The slave may be sold or devised, or may pass by descent in the same manner as other inheritable estate. He has no civil rights or privileges. *He is incapable of making or discharging a contract, and the perpetual right to his services belongs exclusively to his owner.*"

Bland and Woolfolk vs. Negro Dowling, 9 Gill & J, pp. 19, 27.

"Looking at the state of slavery as it exists in this State, and the relations between the slave and his master growing out of such condition, *one cannot maintain the principle that a slave can enter into any binding contract with his master,* or that he could appear as a suitor in any of our Courts of Justice, legal or equitable, to enforce any alleged contract."

Berard vs. Berard, 9 Louisiana Reports, p. 156—

"A slave cannot stand in judgment for any other purpose than

to assert his freedom. *He is not even allowed to contest the title of the person holding or claiming him as a slave.*"

Hatch vs. Brown, 2 Hills So. C. R., p. 396—

"A *slave* being a *personal chattel* is *incapable* of *holding property* in his *own right*, and the *possession* and title must be referred to his master."

Jackson vs. Levey, 5 Cowan, 397, the Court held—

"That the state of slavery in this country compares with that existing under the Roman law, in many respects. The purposes of society in civilization, more correct notions on the subject of moral obligation, and above all the benign influence of the Christian religion, have softened many of the rigors attendant on slavery among the ancients. But the *rights* of the *slave* in respect to marriage and the *acquisition* of and *transmission of property by way of inheritance, remain substantially on the same ground.*"

Jenkins vs. Brown, 6 Humph. Tenn. Reports, 299, the Court decided that—

"It is unquestionably true that a slave has no right to acquire and hold property or money; that *he* and *everything of his earnings belonged to his master;* and that he can make *no contract* which is obligatory upon himself or the person contracted with."

Hall, therefore, was the slave of Roach, and had not the ability to acquire title to the cotton in question, which is clearly established to have been the property of Roach when it was seized and taken possession of by the army of the United States and turned over to the agents of the Treasury Department, and by them sold and the proceeds paid into the Treasury.

T. H. N. McPHERSON,
Attorney for Appellee.

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